

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JESSIHA LANCASTER,

Plaintiff,

v.

HAROLD CLARK, *et al.*,

Defendants.

Case No. C07-5251 RJB/KLS

ORDER DENYING PLAINTIFF'S
MOTION TO SET
AFFIRMATIVE DEFENSE FOR
HEARING

Before the Court is Plaintiff's motion to set one of Defendants' affirmative defenses for hearing. (Dkt. # 73). Having reviewed the motion, Defendants' response (Dkt. # 75), and balance of the record, the Court finds that the motion should be denied as it is unnecessary at this stage of the proceeding.

DISCUSSION

In their Answer to Plaintiff's Amended Complaint, Defendants stated as one of their affirmative defenses, that Plaintiff has failed to state a claim upon which relief may be granted. (Dkt. # 62, p. 7). In response, Plaintiff filed this motion, stating that the motion, along with his supporting affidavit and evidence as allowed by Rule 56(e), is in response to Defendants' "affirmative defence [sic] – motion for summary judgment."

Defendants oppose Plaintiff's motion, stating that they merely enumerated their affirmative defenses in their Answer as required by Rule 8(c), and that they have not filed a motion to dismiss or

1 motion for summary judgment. (Dkt. # 75).

2 As there is no motion to dismiss or motion for summary judgment pending, Plaintiff's motion to
3 set Plaintiff's affirmative defense for hearing is denied as premature. In the event Plaintiff wishes to file a
4 motion for summary judgment, he is referred to Fed.R.Civ.P. 56 and to the Court's Pretrial Scheduling
5 Order (Dkt. # 82) for guidance.

6 Accordingly, it is **ORDERED**:

7 (1) Plaintiff's motion to set Defendants' affirmative defense for hearing (Dkt. # 73) is

8 **DENIED**; and

9 (2) The Clerk of the Court shall send copies of this Order to the Plaintiff and counsel for
10 Defendants.

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12 DATED this 4th day of December, 2007.

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16 Karen L. Strombom
17 United States Magistrate Judge
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